PATERNITY DISESTABLISHMENT FACT SHEET

After the paternity disestablishment bill (AB 252) was signed by the Governor, Family Code Section 7646 was added to the California Family Code. Section 7646 becomes effective January 1, 2005. This law allows certain people to file papers with the court (or motions) asking the court to: 1) order genetic or DNA testing; 2) overturn the paternity/support judgment; 3) stop monthly child support; and 4) get rid of child support arrears.

1. <u>Can I ask the court to overturn a paternity judgment which relates to me?</u>

   Yes, if you are one of the people listed below:
   A.　　the man named in the judgment as the father,
   B.　　the woman named in the judgment as the mother,
   C.　　the child named in the judgment, or
   D.　　the legal representative of the people mentioned in A, B or C.

2. <u>What must I do in order to ask the court to overturn the paternity judgment?</u>

   You must file a motion with the court. The motion is described in Section 7646 of the California Family Code. The motion includes a notice that the motion has been filed, a declaration, and a proof of service.

3. <u>Who must receive a copy of (or be served with) the motion?</u>

   A.　　the woman named in the judgment as the mother (or the previously established mother ("PEM"));
   B.　　the man named in the judgment as the father (or the previously established father ("PEF"));
   C.　　the local child support agency (or the "LCSA");and
   D.　　the child's guardian ad litem, ("GAL") if the child has a GAL

4. <u>Does Section 7646 cover every judgment which deals with paternity or support?</u>

   No. Family Code Section 7646 does not apply to:
   A.　　judgments/orders entered by a court in another state
   B.　　orders which do not establish paternity
   C.　　divorce judgments
   D.　　judgments of legal separation
   E.　　nullity judgments
   F.　　judgments concerning a child conceived by artificial insemination
   G.　　judgments concerning a child presumed to be a child of a marriage
   H.　　judgments which are based on a genetic test which did not exclude the PEF as the biological father

5.   Can I file a 7646 motion at any time?

No. A 7646 motion must be filed within certain time frames.   The time frame depends on the type of judgment involved. If you are considering filing a 7646 motion, you should act quickly to make sure that your motion is filed in time.

6.   Must I have genetic test results before filing a 7646 motion?

No. Genetic testing can be conducted after the motion is filed.

7.   Who pays for the genetic testing?

In those cases being enforced by a local child support agency, the local child support agency pays for the genetic testing.

8.   Must I have an attorney to file a 7646 motion.

No. You do not need an attorney to file a 7646 motion. You can prepare the motion yourself, you can seek the assistance of a paralegal, or obtain assistance from the Office of the Family Law Facilitator.

9.   Where can I obtain the forms needed to file a 7646 motion?

You will need three forms to file the motion, they are: 1) Notice of Motion (form # FL-680); 2) a Declaration (no form #); and 3) a Proof of Service (form # Fl-335). Each of these forms are available at each of the CSSD offices. The Notice of Motion and the Proof of Service can also be obtained from your local Family Law court house and on the internet.

10.   Where would a 7646 motion be filed?

If the paternity/support judgment is being enforced by the County of Los Angeles, Child Support Services Department, then the motion should be filed in the Clerk's Office of the court house located at 600 South Commonwealth, Los Angeles, California 90005.

11.   If my motion is granted, will I be reimbursed for child support payments I made while the judgment was in effect?

No.   If the court grants your motion, you are not entitled to reimbursement for   the child support payments you made while the judgment was in effect.

12.   Is it possible for the court to deny my motion even if testing proves I am not the father?

Yes.   If the court determines that it would be in the child's best interest, the court can deny the 7646 motion and hold the previously established father to the judgment.